

EXHIBIT O

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----x
5 DAVID BAKALAR,
6
7 Plaintiff,
8 - against - 05 Civ. 3037(WHP) (ECF CASE)
9

10 MILOS VAVRA and LEON FISCHER,
11 Defendants.
12 -----x

13 October 12, 2005
14 10:28 a.m.

15
16 410 Park Avenue
17 New York, New York

18
19
20 DEPOSITION of the Plaintiff, DAVID BAKALAR,
21 by the Defendants, held at the offices of
22 Pryor, Cashman, Sherman & Flynn, LLP, 410 Park
23 Avenue, New York, New York before Kelly
24 Morgan, a Notary Public of the State of New
25 York.

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2 A P P E A R A N C E S :
3
4 PRYOR CASHMAN SHERMAN & FLYNN, LLP
5 410 Park Avenue
6 New York, New York 10022-441
7 Attorneys for Plaintiff
8 David Bakalar
9

10 BY: JAMES A. JANOWITZ, ESQ.
11 and WILLIAM L. CHARRON, ESQ.
12

13
14
15 DOWD & MAROTTA, LLC
16 277 Broadway, Suite 1310
17 New York, New York 10007
18 Attorneys for Defendants
19 Milos Vavra and Leon Fischer
20

21 BY: RAYMOND J. DOWD, ESQ.
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2 STIPULATIONS
3

4 IT IS HEREBY STIPULATED AND AGREED by
5 and among counsel for the respective parties
6 hereto, that the sealing and certification of the
7 within deposition shall be and the same are
8 hereby waived;

9 IT IS FURTHER STIPULATED AND AGREED that
10 all objections, except to the form of the
11 question, shall be reserved to the time of the
12 trial;

13 IT IS FURTHER STIPULATED AND AGREED that
14 the within deposition may be signed before any
15 Notary Public with the same force and effect as
16 if signed and sworn to before the Court.
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1 Bakalar
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2 D A V I D B A K A L A R, having first been
3 duly sworn by Kelly Morgan, a Notary Public of
4 the State of New York, was examined and
5 testified as follows:

6 MR. DOWD: Good morning, Mr. Bakalar.
7 Thank you for coming here. We appreciate it.

8 I'm going to be asking you a series of
9 questions this morning. You are under oath. If
10 any of them you don't understand, please tell me
11 I don't understand and I will attempt to rephrase
12 it in a way that makes it clear.

13 THE WITNESS: Thank you.

14 MR. DOWD: If you have any questions
15 about the questions or are unsure, please ask
16 for a clarification and I will try to clarify
17 those issues.
18

19 EXAMINATION BY

20 MR. DOWD:

21 Q. Please state your name and address
22 for the record.

23 A. David Bakalar, B-A-K-A-L-A-R. 35
24 Lapland Road, Chestnut Hill, Massachusetts
25 02467.

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Q. I would like to ask you: Have you ever been involved in any lawsuits before?

A. A few.

Q. Okay. Can you just very briefly describe the nature of those?

MR. JANOWITZ: What's the relevance of that?

MR. DOWD: Just background.

MR. JANOWITZ: I don't think that's background.

If you want to ask him if he has ever had his deposition taken, you could ask him that.

MR. DOWD: Will you be moving for a protective order on that point?

MR. JANOWITZ: No. I am just pointing out the obvious. That's not relevant to this lawsuit.

THE WITNESS: Can I ask something, not involving --

MR. JANOWITZ: No, that's okay.

Q. Mr. Bakalar, have you ever had your deposition taken before?

A. Yes.

Q. Under what circumstances?

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A. Well, obviously it was part of a legal action.

Q. What type of action?

A. The most recent involved a producer who did not have a contract and the salary to which he would be entitled.

Q. What was your role in that litigation?

A. I was -- I was the producer, this was an executive producer underneath me.

Q. Were you the plaintiff in that action?

A. No, he was the plaintiff.

Q. So you were sued, you were one of the defendants?

A. Yes. There was no contract, so --

Q. Have you ever been deposed under any other circumstances?

A. Not in the last forty years that I could remember.

Q. Have you ever been a plaintiff in a lawsuit before?

A. Not -- I don't think. This -- this was the only case.

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Q. Can you tell me just a little bit about your educational and professional history?

A. Okay. My training is in physics and physical metallurgy. I have a bachelor's and masters in physics from Harvard and a doctorate from MIT.

I worked for a short time for the Marshall Plan and that was followed by my working at Bell Laboratories and Western Electric which was followed by my starting a company, which I ran for about thirty-odd years.

And during the last twenty years, I have been retired from that and have been a professional sculptor.

Q. Thank you.

Could you briefly describe your work for the Marshall Plan?

A. Yes. When I graduated from MIT, I was -- at that time the Marshall Plan was trying to rebuild Europe and had organized a series of visits by presidents of European companies, top technical people, and MIT had been asked if they could provide a technical

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liaison for these people. So I first worked with them. We toured all over the United States, visited large metal working facilities. And that -- that was followed by these people coming up with the kind of equipment that they needed in order to restore their own set-ups in Europe.

After that I then was asked to organize another tour for another group. So I was not only the technical person, but I was in charge.

And after all that was finished, I then went to Bell Laboratories.

Q. Did there come a time that you started travelling to Europe?

A. The only trips I have made to Europe have really been for -- well, two reasons: One is that when I started my company, after a number of years we acquired a building -- a factory in France and acquired a factory in England, so I would visit those factories. And then I would occasionally go to Europe for vacation or pleasure.

Q. At what time did you develop an interest in the arts?

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A. That occurred when I was in my mid-thirties. I had rented a house in Wellesley that belonged to a Professor of Art at Wellesley College and he had a wonderful library with all kinds of wonderful, beautiful pictures. I began reading these things and that began my occasional visit to some galleries in New York and buying some things. And that's how it all got started.

Q. When you say your "mid-thirties," approximately what years?

A. Well, this was about forty-odd years ago.

Though this was always something I did in addition -- it was not a major activity to my work.

Q. Can you talk about how you first came to start acquiring artwork; just give a little background on that?

A. I don't really know how it happened. As I say, I had read these books, seen these photographs -- I would go to New York occasionally on business and I had some free time and I thought I might enjoy visiting some

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I bought a painting. It stood up time; in other words, I didn't feel after I had it awhile I didn't like it. So I started developing confidence in my eye, so to speak, and it just sort of happened. There was no design to it.

Q. How did it come about that you came into contact with the Galerie St. Etienne?

A. I'm not sure. There was some people I knew in Boston who collected Germanic. They were very serious collectors and it must be that I learned the name of St. Etienne gallery, that this was a very reputable gallery and the main gallery from what I knew. So I -- one of my trips I must have gone in. But I don't really recall anything beyond what I just said.

Q. And could you describe how it came about that you came to purchase the work at issue in this litigation, the "Torso?"

A. I believe I was in a gallery and I was shown work and liked it and I bought it.

Q. Do you recall who showed it to you, any conversations involved?

A. I know that I had been to this gallery

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a couple of times. The head of the gallery was a Dr. Kallir. And I don't recall the conversations, but I know I met him and I believe that I bought the drawings and the -- this particular drawing from him.

Q. When you purchased it, this was in 1964? Do you recall?

A. I'm not sure the date, but it's approximately correct.

Q. Were you given any documentation with the purchase? Do you recall?

A. Well, I knew enough that when you buy a painting or sculpture you ask for the provenance, but I don't recall whether I got the provenance.

I can't imagine that Dr. Kallir would have sent me -- sold me something without providing a provenance, but I don't remember anything beyond that.

Q. You believe there was a document that was provided to you?

A. I have no records of any, but -- there must have been. I can't believe -- he wouldn't have given me something -- this was not a real

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big expensive purchase, but nevertheless, this gallery went by the numbers, so to speak, and he must have provided some provenance to me.

Q. Do you recall how much you paid?

A. No, I don't. All I know, it was not a very large amount.

Q. Did you buy any other artwork from the Galerie St. Etienne?

A. I think at this time I bought two -- two drawings. I have not bought anything else since then from them.

Q. What was the other drawing?

A. It was also a Schiele drawing.

Q. And is there a name of that drawing?

A. I don't recall the name.

It was of a woman.

Frau something. I don't recall.

MR. DOWD: I'm showing the witness a book called "Jane Kallir; Egon Schiele, The Complete Works."

Q. Mr. Bakalar, I would like to show you a page --

MR. DOWD: I'm showing the witness page 449 of this book.

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Q. I would like you to look at number 888 which is a drawing.

A. This one here? (Indicating.)

Q. Yes.

A. I see it.

Q. Is that the drawing?

A. No.

Q. Do you know whether the drawing is in this book?

A. I have never seen this.

MR. JANOWITZ: He just testified he has never seen this book.

A. I have never seen this book before.

Q. Are you familiar with this book in any way?

A. Not beyond what you have just shown me.

Q. Now, the drawing that you have just referred to --

MR. JANOWITZ: Can we be clear which drawing because he has spoken about two.

MR. DOWD: Let's just clarify for the record.

Q. Mr. Bakalar, do you recall the name

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of -- not the drawing that the litigation was started over, the "(Torso), Seated Woman with Bent Left Leg," but the second drawing that you referred to?

A. I don't recall her name. It was a longer German name. Frau something.

I don't remember, but it's not this one you just showed me.

MR. DOWD: Do you know if the drawing -- we will refer to it as the second drawing?

MR. JANOWITZ: That's fine.

Q. The second drawing, do you know whether it was assigned a Kallir number?

MR. JANOWITZ: Objection to the form of the question.

THE WITNESS: Shall I answer?

MR. JANOWITZ: No.

You haven't established what a Kallir number is or that the witness has any idea what a Kallir number is.

I certainly have no idea what a Kallir number is.

MR. DOWD: Thank you for the

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testimony.

Q. Mr. Bakalar, do you know what a Kallir number is?

A. No, I don't.

Q. Mr. Bakalar, I'm going to show you a document that's been Bate stamped P0213 through P0216. I would like to ask you if you can identify that document.

MR. JANOWITZ: Do you have a copy for us?

MR. DOWD: I told you in the beginning of the deposition that I got these documents yesterday and that I didn't have copies for you.

MR. JANOWITZ: This is from our production?

MR. DOWD: Yes.

I showed you this at the beginning of the deposition and I said that I didn't bring a copy with me because I just received the documents yesterday. And I asked you, Mr. Janowitz, to make sure that you had confirmed the documents.

A. What are you asking me about this

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document?

MR. CHARRON: Off the record.

(Discussion held off the record.)

Q. The question is, Mr. Bakalar, can you identify that document?

A. No, I can't.

Q. Have you ever seen it before?

A. I have no idea what this document is.

I -- I don't think -- I don't know what it is. I don't think so.

Q. That's fine.

I'm going to show you this document to see whether you recognize a name that appears in this document. It's on the page that's Bate stamped P0215 and there is two names in German, I would like to see if you can identify either of those names.

A. Where?

Q. It say "Re" about two-thirds down the page.

MR. JANOWITZ: Why don't you just read the names to us?

MR. DOWD: I can't read German.

A. Point out --

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Q. Egon Schiele and then F-R-A-U, M-I-T -- S-C-H-W-A-R-Z-E-R, S-C-H-U-R-Z-E?

A. Yeah.

Q. Is that the drawing, the second drawing that we discussed earlier?

A. Well, let me put it this way, I know enough German -- this Schwarzer means black -- black something which refers to this drawing.

That is not my second drawing.

Q. That's not the second drawing?

A. No, it is not.

Q. I want to go back to -- you said that you believe that Dr. Kallir had sent a provenance to you, but you don't have a record of that; is that correct?

A. I would find it difficult to imagine that I didn't ask for a provenance and get a provenance from Dr. Kallir, but I have no record of it.

Q. At the time you purchased it, do you recall where you believed that the drawing -- the first drawing came from?

A. I have no idea.

Q. Do you recall at that time that it

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was by any particular artist?

A. Well, the first drawing was by Schiele. It was a Schiele.

Q. Okay.

A. But, you know --

MR. JANOWITZ: You have answered the question.

Q. And the second drawing, when did you purchase that in relation to your purchase of the first drawing?

A. I'm not sure. I think I must have purchased them at the same time, but I'm not a hundred percent sure of that.

Q. And with respect to the provenance of the second drawing, do you have any independent recollection of that provenance?

A. No. No.

Q. Did there ever come a time when you met Jane Kallir?

A. I have never met her at any time.

Q. Following the time when you first purchased the drawing, did you have any subsequent contact with the Galerie St. Etienne?

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A. Well, I remember going in their subsequent to my purchasing the drawings and having Dr. Kallir show me a large Schiele painting of some figure -- some male figure seated in a chair which he was trying to interest me in buying.

I didn't buy it.

Q. Did you have any other subsequent contacts with Dr. Kallir or the gallery?

A. I don't think so, no.

Q. Have you ever corresponded with Dr. Kallir, the gallery or Jane Kallir?

A. No.

Q. Did there ever come a time following your initial purchase that you learned anything else about the possible provenance of the drawings?

A. Well, the only time the possible provenance has come to my attention is when you folks started the lawsuit -- you didn't start a lawsuit, but when you contacted Sotheby's and that's how the other -- only other exposure I have had to the possible provenance.

MR. DOWD: I would like to mark this

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document as Defendant's A.

(Document marked as Defendant's Exhibit A for Identification, as of this date.)

Q. Mr. Bakalar, I'm handing you a document that's marked as Defendant's A and it's titled "Complaint for Declaratory Relief" in this action.

Have you seen this document before?

A. Could you repeat the question?

Q. Have you seen this document before?

A. Yes, I have.

Q. Have you read it?

A. Yes, I have read it.

Q. If you look through it, as we are sitting here today, is there anything that you believe in this complaint is inaccurate?

And you could take a few minutes.

A. This complaint was put together by my attorney who showed it to me afterwards. At the time I had no reason to question anything in the document.

But I think that there is something in it where I have seen information subsequent to that period of time -- I think there is something

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in here that refers to -- I don't know where it is. Something that refers to the initial owner of the document. I don't know where it is. But going into Fritz Grunbaum being the owner of the document. I don't know at this point whether he was.

As I say, this thing was put together by my attorney who -- and I have no reason to believe he was or wasn't. But I certainly don't know that he was.

MR. JANOWITZ: When you say "the document," do you mean the drawing?

THE WITNESS: He was the owner of the drawing, yeah.

I think here it that. Doesn't it?

Q. I will refer you to page one, paragraph five, it's at the bottom of the page.

A. Yes, that's where. That's exactly what I am referring to. When this thing was put together by my attorney, I had no information one way or the other and I guess -- how he arrived at this, I have no idea and so I signed it.

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But since then I have seen some information -- I'm not sure where -- which indicated that -- that the Swiss gallery that originally sold this particular drawing really had no exact knowledge that that belonged to the collection of Fritz Grunbaum.

So at this point I don't believe this statement -- I think this statement is incorrect and I think that it probably did not belong to Fritz Grunbaum. Or it may have, I just don't know. But I think this statement is not correct.

Q. Mr. Bakalar, this document, it's twenty-one pages long and I would just like to be certain that you have taken a moment and read through it because it's very important at this point that we establish if there is any other information in here that you believe to be inaccurate so we set the record clear.

So I will ask you to take a few minutes now --

MR. JANOWITZ: It may take more than a few minutes.

MR. DOWD: We could take a break.

A. I repeat, once again, I think that the

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statement at the bottom of the first page is not correct because it's very positive and I don't -- to the best of my knowledge that has not been substantiated.

Q. And the information that you saw that caused you to believe that this statement in paragraph five might not be accurate, can you describe what information was --

A. I'm not sure. One of the documents that I saw.

At one point there was a questioning of the owner of the Swiss gallery and he had made a statement that when he questioned the lady that brought it there -- what was her name, Lukcas -- she indicated that it came from the family and therefore he at that point assumed that it was part of the Grunbaum collection. I did read that somewhere and when I saw that I realized that this statement is not true here because this is very definitive and it's not definitive.

Q. I'm going to be taking you through some of the allegations of the complaint, so if you would like to take a moment or two to reread it, I would appreciate it.

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MR. JANOWITZ: Because it could take really a while, it is a long and dense document, why don't you focus on the allegations that you want to question him on and direct his attention to those allegations and he could read them when you focus his attention on them.

I'm sure you don't want to go through each and every paragraph of the complaint.

A. There is so much here I will get dizzy reading it all. Why don't you tell me what you want to focus on?

Q. Okay. I will try and accommodate you in this.

A. Thank you.

Q. Starting at the top of page two, it says, "In 1938 the Nazis confiscated Grunbaum's residence."

When this allegation was made, what documentation or information did you have?

A. I have no information about that whatsoever.

I hired my attorney and I had no reason to believe that this was not true.

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I don't know if it is true and therefor I certainly was in no position to question the attorney's inclusion of this.

Q. And moving down to the last sentence of that top paragraph where it says -- the sentence that starts "By all credible accounts, the Grunbaum art collection escaped confiscation" -- you see that sentence?

A. Sure.

Q. Are you aware of any particular accounts?

A. I'm not aware of any accounts at all.

I would think that if the Nazis confiscated this, it never would have -- it never would have seen the light of day again.

But be that as it may, no, I am not aware of anything.

Q. Now, in paragraph six it makes reference there to "a reputable art gallery in Bern, Switzerland. Does that refer to the Kornfeld gallery?

A. That is my understanding, yea.

Q. Do you have any information or knowledge that that is a reputable gallery?

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A. The only knowledge I would have is I know the St. Etienne gallery is reputable based on the experience of people that have been buying things from them and I would be amazed if they had been dealing with someone who was not reputable.

But I don't know this gallery at all.

Q. When you mentioned people buying things, what people?

A. Pardon?

Q. You mentioned people buying things from them?

A. Yeah. They were -- at the time when I bought this there were a few collectors in Boston who specialized in Germanic art and I learned about the St. Etienne gallery from them. And I never would have dealt with them if they didn't consider them to be reputable.

Q. Do you know the names of these people?

A. Well, I could give you one. Dorothy Edenburg (ph) who was primarily a collector of Germanic art.

Q. Any others?

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A. I think she could give you -- if you want to follow that up -- some others. There was another, but I don't recall their name now.

I was not a collector of Germanic art. I just happen to meet these people at parties.

Yeah, I do recall one more. I believe Arthur Vershbow, Dorothy Vershbow. Dorothy is now dead, but Arthur is still alive. I think -- I'm not sure, but I think they also may have collected art. But Dorothy was the main one.

Q. In paragraph seven it refers to an article in Kenyon Review.

MR. DOWD: I looked through the responsive documents, has that been provided to us?

MR. CHARRON: I believe it has.

MR. DOWD: Is that the last --

Q. No question there.

When it says it "was exhibited in 1960 at the Institute of Contemporary Art in Boston," did you see it there at the --

A. I have no recollection of this at all, none.

Q. Now in paragraph nine, it refers to

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plaintiff consigning the drawing to Sotheby's. That's you.

How did it come about that you consigned the drawing to Sotheby's?

A. Well, the -- I decided to sell it.

Q. Was there any circumstances that led to that decision?

A. The value of the Egon Schieles have gone up tremendously in previous sales. I had a tax loss carry forward because of a movie venture and so I could sell this painting even though it has substantial gain without paying taxes and so I contacted Sotheby's.

Q. And when you consigned the drawing, did you consign any other artworks?

MR. JANOWITZ: Specifically at that very time?

A. Yeah. These -- there are two drawings that were consigned.

Q. So the two Schiele drawings?

A. The two Schiele drawings.

Q. Can you point me to any document that would show me the name of the second drawing?

A. I don't have any document that could

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show you the name.

The second drawing was sold by Sotheby's and if you want to do the research, you can take out their catalog and find it, there would be a photograph of it.

But I could tell you, it was not the drawing that you showed me.

Q. Do you know who the purchaser was?

A. No. They never tell you that.

Q. Do you know what the sales price was?

A. Only approximately -- I don't recall the exact number, but it was I think somewhat more than this particular second drawing, what it sold for.

Q. A million, two million?

A. No, it was less than that.

Q. Do you recall a range?

A. Well, I am saying it was somewhat more than the second drawing, that will give you the range right there.

I don't want to give you a number because I'm not sure of the number. But again, that would be a matter of record which you could easily find out.

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Q. Have you ever discussed this case with Jane Kallir?

A. No.

Q. Have you ever spoken to Jane Kallir?

A. Never.

Q. Now, did there come a time that Sotheby's informed you that there was a concern over the provenance of the drawing?

A. I wouldn't use the word "concern." There was not concern.

There was a time when they told me that while they had confidence in the integrity of the provenance that they wanted to do a lot more legal research to back up their opinion and that would take a little bit of time. And that's what they did.

Q. And do you recall the time frame?

A. Yeah, the time frame was between November and February. They actually took about three -- more than three months to reinforce the integrity of the provenance.

Q. So your consignment was somewhere in November of 2004, roughly?

A. Yes, that's correct.

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Q. And could you recall your conversations with Sotheby's over why they wanted to investigate the provenance?

A. I didn't get into that. What they basically told me is they had to do some legal research and while they felt that the provenance was okay, they wanted to be two hundred percent certain and I said fine.

Q. Did they ever mention to you Fitz Grunbaum?

A. I don't believe so. I certainly have no recollection of it.

Q. When is the first time you heard of Fritz Grunbaum?

A. I'm not sure. It came as a result of the complaint by your clients. I -- I was certainly not familiar with the name before that time.

Q. Had you ever heard of the controversy the "Dead City" painting?

A. Sotheby's had mentioned that. But they also told me -- now this was about the time that they said they wanted to do more research on this, but they also told me that

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they had no hearings in terms of the second drawing.

MR. JANOWITZ: The second drawing? I think we may be --

THE WITNESS: The drawing which was put up for auction in England.

MR. JANOWITZ: You mean the "Woman With Bent Left Leg"?

THE WITNESS: Yes.

MR. JANOWITZ: Wait. I'm not sure that's clear.

MR. DOWD: Why don't we go through it again?

Thank you, Counsel.

Q. Mr. Bakalar, I just want to clarify because the court reporter is taking a written record what your testimony relates to. So I will break it down.

A. Sure.

Q. On or around November 2004, you made a consignment of two Schiele drawings, correct?

A. That's correct.

Q. Now, the first drawing, which we have

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been referring to as the first drawing --

A. Is Frau something.

Q. No. No. I will make it clear. I will show you the picture.

The first drawing is the drawing that you commenced this litigation over.

I am showing you Kallir number 1974, "The Woman Without --

A. Just so we don't get confused here, there were two drawings.

Q. Right.

A. The Frau something or other drawing was sold in November and that is not the drawing that you showed me.

Q. Okay.

A. This other drawing was put up for auction in London after Sotheby's had done three months of intensive research reinforcing the provenance.

Q. So when you presented the Frau drawing that we have been referring to as the second drawing --

A. You got me confused on first, second. There were two drawings. Rather than put a

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number to them -- it's confusing -- Frau is one and Torso is the other.

Q. Okay. So the Frau drawing went to Sotheby's in November 2004?

A. And was sold.

Q. And was sold in New York?

A. In New York.

Q. Now, with respect to the "Torso" drawing, Sotheby's came back to you and said we need to do essentially some legal research on this; is that correct?

A. And we suggest that this thing be put for auction in England -- the "Torso" one -- that will give us enough time to reinforce the legal basis of the provenance. And they then came back to me at some point and said well, we are not feeling what we had initially, we have no problems. It was totally reinforced by everything we have done since then and therefor the auction should proceed.

Q. Did there come a time that you heard the name Eberhard Kornfeld?

A. Only as a result of this legal action. I had never heard of it before.

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Q. I'm going to refer you to page six.

MR. JANOWITZ: Of the complaint.

Q. Of the complaint. And paragraphs twenty-two through thirty-three tell the story of Fritz Grunbaum.

Is it fair to say that paragraphs twenty-two through thirty-three are not based on your personal knowledge or you have no independent personal knowledge of the information in paragraphs twenty-two through thirty-three?

A. I think that that's correct. I certainly have no personal knowledge of it.

Q. Paragraph thirty-five there is a reference of a Norman Granz. Do you have any personal knowledge of that transaction referred to in paragraph thirty-five?

A. I do not.

By personal knowledge, I assume you mean was a party to it in any way.

I don't know what you mean by the expression "personal knowledge."

Q. Earlier you had testified that your lawyer put together the complaint and you had not really heard of --

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A. That's the extent of my knowledge.

Q. -- Fritz Grunbaum. Okay.

Moving down to paragraph thirty-seven. It says, "In or about 1963, plaintiff purchased the Drawing at Galerie St. Etienne in New York. At the time of the purchase, Otto Kallir advised plaintiff that the Drawing had been acquired from Gutekunst and Klipstein in Switzerland. The Drawing thereafter remained in plaintiff's personal collection."

Now, I'm going to refer you to the second sentence of that paragraph. Do you believe that to be a true statement?

A. I -- it depends what you mean my "advised plaintiff."

I don't know -- let's put it this way: I don't have any recollection of any of this. I assume -- and I don't even know whether this information was in a provenance that may have been given to me at some point. But I certainly have no personal knowledge of it.

And I certainly don't remember a discussion with Dr. Kallir about the provenance before St. Etienne gallery had the drawing.

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No, this statement -- if by this you mean was there a discussion between Dr. Kallir and myself, I don't have any recollection. I certainly don't think there was.

Q. Now, moving to paragraph thirty-nine. I would like to just ask you to read paragraph thirty-nine and then I want to ask you a question about it.

A. Yeah. What about it?

Q. Actually withdrawn. I don't have a question.

A. Okay.

Q. Forty, paragraph forty. Now paragraph forty reads, "Aside from the Drawing, there are a number of works from the Fritz Grunbaum collection that were part of the 1956 selling exhibition at Gutkunst and Klipstein which are now in museums around the world including at least one work in each of the following institutions" -- and there follows in the complaint a list of institutions.

Now, Mr. Bakalar, looking at that list of institutions, do you have any personal

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knowledge of any of these works in any of these institutions?

A. I do not.

Q. Do you know where this information came from that is in this complaint?

A. Well, this was the information that was given to me by my attorney. I believe that he obtained it from Sotheby's.

Q. In paragraph forty-four, the third sentence down, speaks of, "In connection with its due diligence on the piece, Sotheby's contacted Jole Levi as counsel to the heirs" -- and it reads forward.

Did Sotheby's inform you of any contacts with a Mr. Jole Levi?

A. I believe that they did inform me. There was some document that referred to it and that was part of their process of becoming satisfied that their original judgment in terms of the provenance was basically correct.

Q. Paragraph forty-five is a reference -- again we are referring to the complaint -- to an unidentified buyer for the drawing.

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Do you know who the buyer was?

A. I do not know who the buyer is. Sotheby's normally will not tell you who they sell to.

But they did mention that it was a dealer for some gallery and they didn't say who or what.

MR. JANOWITZ: May I ask that you provide us with copies of all of the exhibits as marked?

MR. DOWD: I did, actually. I gave you a copy of the complaint --

MR. JANOWITZ: Right.

MR. DOWD: You are saying just the front page of it?

MR. JANOWITZ: Yes, so we see the stamp.

MR. DOWD: That's no problem.

I meant to bring a copy of it, but I didn't, of our Request of Production of Documents.

Do you have a copy of that? I just want to show it to the witness.

Mark as Defendant's B.

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(Document marked as Defendant's Exhibit B for Identification, as of this date.)

Q. Mr. Bakalar, I'm showing you a document that's marked as Defendant's Exhibit B and the title of it is "Defendant's Request for Production of Documents."

Have you seen this document before?

Actually, if you turn to the third page it might refresh -- one more page. I'm sorry.

You see a list of questions there? On page five, see a list of questions?

Have you seen those questions before?

A. I believe I must have, yeah.

Q. That's my only question.

I could take that back.

And the "Response and Objections" I would mark as Defendant's Exhibit C.

(Document marked as Defendant's Exhibit C for Identification, as of this date.)

Q. Mr. Bakalar, I'm handing you a document that's been marked as Defendant's Exhibit C and it's titled "Plaintiff's and Counter-Claim Defendant David Bakalar's Responses and Objections to Defendants' First

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Request of Production of Documents." It's a nine-page document.

And following that document or with it, I am handing to you documents that are Bate stamped P0001 through P0252.

Mr. Bakalar, have you seen these documents before?

A. I believe I have, yes.

Q. Is Defendant's Exhibit C your response to Defendant's Exhibit B?

MR. JANOWITZ: The document speaks for itself. It is his response.

The witness doesn't have to answer that question.

That's the response to the document production request.

Q. Do you believe that response to be true and accurate?

A. Well, obviously I believe at the time it was made. I would have to read it now and see if I have learned subsequently --

MR. CHARRON: Are you asking if he believes the legal objections are true and accurate?

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MR. DOWD: Well, the documents, the responses.

A. Well, obviously I believe when it was done. I don't know whether I received information subsequent to that point that might get me to change something.

I would have to read this again to answer that question.

Q. Take a few minutes and take a look at.

MR. JANOWITZ: No, I don't want to waste time here. You asked for documents, we provided you with a response.

This is a lawyer's task. The lawyers did it. You got it.

If there are supplements that need to be made -- and, in fact, I think there was one made this morning, we provided it to you. And if there are further supplements that should be turned over, we will turn them over.

So I don't know what your question is. This is the plaintiff's response to the document request.

Ask your next question.

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Q. Mr. Bakalar, have you provided to us any documents in your possession relating to the acquisition of the "Torso" drawing?

A. To the best of my knowledge, yes, everything I have.

Q. And are the documents that you turned over, are they in this production that you see in front of you?

MR. CHARRON: Wait a minute. The objections and the responses, again, obviously speak for themselves.

I think that to clarify the question what you might want to ask Mr. Bakalar is if he turned over whatever documents he had that would be responsive to the Defendants' first set of requests.

I'm not sure that Mr. Bakalar -- I believe that the response to the first request that you are asking him about says quite clearly that plaintiff has no documents responsive to this request, specifically meaning plaintiff's acquisition of the drawing that we are now calling "Torso".

And I just don't want you to confuse the

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witness.

MR. DOWD: I don't want to confuse the witness either.

The document production that I received didn't indicate which documents were responsive to which question, so I am trying to clarify that. And you know where these documents came from.

MR. CHARRON: But obviously if the response clearly says he has no documents responsive, then that should answer your question, that the documents that were produced -- there is nothing in there that would respond to request number one subject to any waiver of the objections that have been lodged.

MR. DOWD: If he doesn't have any documents, then the answer is I don't have any documents.

MR. JANOWITZ: That's what he says.

MR. CHARRON: That's the answer.

MR. JANOWITZ: That's what he said.

Q. So you didn't turn over any documents to your attorneys?

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MR. JANOWITZ: With the exception of the document we turned over to you this morning.

MR. CHARRON: The only documents that Mr. Bakalar has responsive -- that Mr. Bakalar has responsive to the request was the document that I gave to you this morning.

Q. Okay. So this is the only document in response to this entire question.

MR. JANOWITZ: Could you indicate on the record which documents?

MR. DOWD: We are looking at the document Bate stamped approximate P0250 through P0252?

MR. JANOWITZ: That's the only document that Mr. Bakalar had that was responsive to request number one.

MR. CHARRON: No. To any of the requests.

MR. JANOWITZ: Or to any of the requests.

MR. CHARRON: Because request number one concerns the acquisition.

Q. So looking at this, Document Requests

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one through fourteen, up until today, the only document that you have provided to your attorneys, Mr. Bakalar, is --

A. That's correct.

Q. -- this three-page document --

A. That's correct.

Q. -- Bate stamp P0250 through P0252 that has Sotheby's at the top and it's dated November 18, 2004?

A. That's correct.

Q. Let me show you document Bate Stamped P0001 through P0123.

Can you identify these documents?

A. These are all in German -- most are in German.

How far do you want me to go with this?

Q. They appear all to be from the same source and they are numbered -- the first -- there is groups stapled together and the first page seems to be handwriting in English attached to a text in German.

A. I have no idea what any of this is all about.

MR. JANOWITZ: I do.

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A. It's all in German.

And have I seen it?

MR. JANOWITZ: Are you interested in the answer?

MR. DOWD: If counsel would like to testify.

MR. JANOWITZ: It's not a question of testifying, I haven't been sworn.

If you would have asked me, I would have told you and I am happy to tell you now.

We got them from Mr. Kornfeld.

MR. DOWD: Which documents came from --

MR. JANOWITZ: The ones that are in German with the handwritten translations and the numbers.

MR. DOWD: Up through --

MR. JANOWITZ: I don't know what number, but they are very obvious which documents they are.

MR. CHARRON: Can I also just add -- because we are being constrained to do so -- Plaintiff's initial discovery dated September 6, 2005 which, of course, is another

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lawyer document, it clearly disclosed the categories of documents that Plaintiff expected to produce and did ultimately produce. And it's explained, Mr. Dowd, that there were two categories of documents, documents produced by Mr. Kornfeld care of his legal counsel and documents produced by Sotheby's. And it also clearly explains that these were documents that were located at our offices.

So there is -- I'm not sure what the source of your confusion is. Everything has been explained in advance.

MR. JANOWITZ: To be clear, if you have any question, the documents that you were questioning Mr. Bakalar on, the ones that are in German and have translations and have numbers, are all from Mr. Kornfeld.

MR. DOWD: Up through P0101, they appear to all be in the same --

MR. JANOWITZ: It appears. I haven't gone through it carefully, but superficially that seems to be correct.

MR. DOWD: Would it be fair to say

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that P0102 through P0244 came from Sotheby's?

MR. CHARRON: That would not be correct.

MR. JANOWITZ: For example, there is a Kenyon article, that was not from Sotheby's. I don't know if there is anything else in there.

It's certainly primarily from Sotheby's.

MR. CHARRON: Kenyon article is not from Sotheby's.

P245 through 249, as it says on its face, is from Sotheby's.

MR. DOWD: I think I am missing that document.

MR. CHARRON: That's what was sent to you last night, Fed Ex as well.

MR. DOWD: I didn't get it.

MR. CHARRON: There was a fax sent yesterday, I believe, about 4:30.

MR. DOWD: I haven't seen that.

MR. CHARRON: Off the record for a second.

(Discussion held off the record.)

Q. I just have a couple more questions

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Mr. Bakalar.

Just to clarify your earlier testimony, did you testify that prior to the Defendants in this action raising their claims, that you were not aware of Eberhard Kornfeld?

A. That is correct.

MR. DOWD: No further questions.

EXAMINATION BY

MR. JANOWITZ:

Q. Mr. Bakalar, at one point looking at the description of a painting you indicated that you knew that Schwarzer meant black.

A. Yeah.

Q. Do you speak German?

A. Not really. But I know a little Yiddish.

MR. JANOWITZ: Okay. Thank you.

(Continued on the next page to accommodate Jurat.)

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A. I looked at the thing, it said Schwarzer, and she was wearing black.

MR. DOWD: Thank you very much for your patience today.

(Time Noted: 11:47 a.m.)

DAVID BAKALAR

Subscribed and sworn to
before me this _____
day of _____.

NOTARY PUBLIC

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I, Kelly Morgan, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 12th day of October, 2005

Qm

KELLY MORGAN

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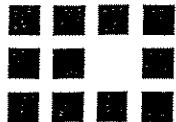
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EXHIBIT P



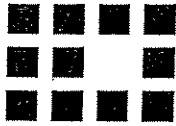
THE ART LOSS REGISTER, INC.

Note: A. F. Mondschein and Frederick Mont are the same person. Mondschein (formerly in Vienna) changed his name to Frederick Mont on emigrating to the United States. He died a few years ago. Efforts to locate any records from his gallery have been unsuccessful.

Object: Painting
 Artist: Egon Schiele
 Title: *Girl with Black Hair*
 Date: 1911
 Inscriptions: Signed and dated lower left Schiele Egon 111
 Medium: Watercolor and Graphite Pencil on paper
 Dimensions: 17 3/4 x 12 7/16 in. (45 x 31.6 cm.)
 Provenance(as provided): With Gutekunst & Klipstein, Bern (1956); With Galerie St. Etienne, New York (1957), from whom purchased in 1958.
 Digital color image supplied.

Note: Gutekunst & Klipstein were formerly Klipstein & Kornfeld. Based on the provenance, it is possible that this painting was originally from the Grünbaum collection. There is a recently published book (2001), 'Unser Wien' by Walzer & Templ which has some information on Grünbaum and his collection. The following is a summary of information from the book translated by the ALR in London:

Fritz Grünbaum was a publisher of operetta libretti and a cabaret artist, famous throughout the world. He also possessed an important art collection whose whereabouts is unclear today. Because the individual works were not officially confiscated, the reconstruction of events is based on clues. The collection consisted of a mixture of valuable and degenerate works. Grünbaum was arrested straight after the Anschluss and deported. In January 1941 he died of mistreatment in Dachau. His wife, Lilly, stayed in Vienna after his arrest trying all she could to get a visa so that she could save her husband's life. She did not manage this, was deported to Minsk and died. On the day of her deportation, she had to fill out a property declaration but there was no mention of artworks on it. As valuables were barred to Jews, it is not likely that she could get access to them, or have the means to sell them. There are files that indicate the collection was intact until the summer of 1939. The argument that Lilly's sister, Mathilde Lukacs, could flee with the collection is therefore in dispute. Mathilde Lukacs and her husband fled across various countries to Belgium in August 1938 and both were interned there. Herr Lukacs, a jeweller by trade, had been arrested by the Germans on 14th March and forced to flee Austria. It was not even possible for him to take his precious stones with him, so it is not likely that he could have taken, unnoticed, 449 artworks including oil paintings (one on wood), out of the country. While this may be possible in the case of drawings, it seems questionable for paintings. It is more likely that Grünbaum's collection stayed in Austria. The author Hans Veigl spoke of an interview with Grünbaum's neighbour who said that Grünbaum's flat was aryanised and his library and extensive art collection sold to an unnamed Viennese antique dealer for 200 RM. The collection was appraised for the Nazis by an expert named Franz Kieslinger. Kieslinger was an agent for Kajetan Mühlmann and was a specialist on medieval art. Kieslinger took on the role of a broker.



THE ART LOSS REGISTER, INC.

A large number of Schiele's from Grünbaum's collection surfaced in 1956 at an auction in Bern (this was Gutekunst & Klipstein). How these works got to Bern is unexplained. Perhaps they were taken from Austria to Switzerland in circuitous ways. There are neither customs documents or export permits - this transportation was not official. It was claimed that the art dealer had bought the pictures from Frau Lukacs which had been shipped to her in Belgium by Lilly Grünbaum before her deportation. Contact between the two sisters, Lilly and Mathilde, before Lilly's deportation is also not proven. On the contrary, Mathilde Lukacs knew nothing about the fate of her sister in 1945 and it was not until 1963 that was officially declared dead.

For the sale of the Schiele works in 1956, there were two specialists acting in support roles: Otto Benesch and Otto Kallir. Benesch, then director of the Albertina must have recognized the collection - it had been published before 1938. Benesch wrote the introduction to the auction sale in Bern. Otto Kallir, author of the first catalogue raisonné, officially bought at the auction a significant number of the Schiele works and was the founder of the Galerie St. Etienne. However the Grünbaum collection got to Switzerland, evidently it was not sold freely by Fritz Grünbaum or his wife - both lost their lives in the Nazi terror.

As noted above, the Art Loss Register does not know for certain whether this painting formed a part of the Grünbaum collection. The collection was published at some point prior to 1939 and the ALR could try to locate that catalogue and determine whether it was a part of the Grünbaum collection. There is a catalogue at the Frick Library of an exhibition in 1956 at Gutekunst & Klipstein of works by Schiele. It may be the catalogue for the sale in the provenance. The ALR would recommend additional research on the painting.

- redacted -

OBBER0059

EXHIBIT Q

March 3rd, 1948

Mr. G. B. Neuman
41 East 57th Street
New York, New York

Dear Mr. Neuman:

This is to confirm that today we exchanged the following watercolors and drawings by Egon Schiele for one copy of the book "Père Ubu" with illustrations by Georges Rouault:

1. The artist's wife in blue blouse, watercolor 1917
2. Portrait of Marga Boerner, watercolor 1917
3. Girl with yellow shawl, watercolor 1911
4. Sketch of a woman with black stockings, watercolor 1913
5. Boy, watercolor 1910
6. Red haired woman with green shirt, watercolor 1914
7. Standing Woman, watercolor 1912
8. Girl, drawing 1913
9. Girl with Coat, drawing 1918
10. Nude Boy, drawing 1912
11. Portrait of a Woman, drawing 1911

In consideration of the fact that many objects looted by the Nazis are being brought over here, you have assumed all responsibility that the Schiele works come from perfectly reliable sources, and that they were in the possession of the previous owners since before the war.

Sincerely yours,

GALERIE ST. ETIENNE

Otto Kallir

ok:ma

9. Letter from Otto Kallir to J. B. Neumann, March 3, 1948. Courtesy Galerie St. Etienne, New York. It is interesting to note that the eleven works on paper by Schiele were considered equal in value to the book of thirty-three etchings by Georges Rouault. Today, Rouault's *Père Ubu* suite is valued at about \$10,000, while a single Schiele drawing without color can command in excess of \$50,000.

policies that often made it difficult for victims to retrieve their property, Kallir helped a number of people pursue their claims in Austria, with mixed success.¹³ In his own art dealings, he did everything possible to avoid handling works that might have been stolen, although of course he was not omniscient (and often complete provenance information was unavailable).¹⁴ When, in 1948, Kallir acquired a group of eleven Schieles from the dealer J. B. Neumann, he asked Neumann to warrant that "they come from perfectly reliable sources and were in the possession of the previous owners since before the war" [Fig. 9].

The Galerie St. Etienne's 1948 Schiele show drew upon a greater number of sources than its predecessor had seven years earlier, and was therefore considerably more substantial. Kallir himself described this as the artist's first "comprehensive" American exhibition, and at least one journalist mistook it for his very first.¹⁵ Though Kallir's command of English was still a bit sketchy, he had learned that the secret of promoting an unknown entity in the United States lay in securing endorsements

EXHIBIT R



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Schenker's History.

All important events from its foundation until today.

Ever since the company was founded by Gottfried Schenker in Vienna 130 years ago, Schenker provides its customers with all the main services from a single source.

1872

Gottfried Schenker founds Schenker & Co. in Vienna, Austria.



1873

First consolidated rail consignment from Paris, France, to Vienna, Austria.

1874

Branch offices established in Budapest, Hungary, Bucharest, Romania and Prague, Czech Republic.

1880

Acquired a stake in the steam navigation company Adria Dampfschiffahrts-Gesellschaft.

1895

Founded Austro-Americana Shipping Company.

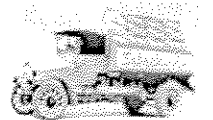


1901

Gottfried Schenker passes away in Vienna and is succeeded by his adoptive son Dr. August Schenker-Angerer.

1918

After WW I, Schenker focuses on express delivery services, regional freight forwarding, removals and trade-fair services.



1922

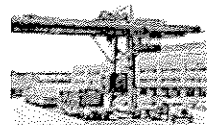
First air freight shipments in Germany.

1924

The German export industry goes on an international exhibition tour organized by Schenker.

1928

Following the acquisition of BEHALA, Schenker headquarters are transferred to Berlin.



1931

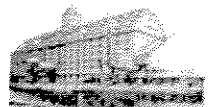
Schenker is acquired by the German Railways. First sea freight container shipments.

1945

Rebuilding process begins following disappropriation and the loss of numerous bases in WW II.

1947

Subsidiary established in the U.S. - internationalization and air freight are pursued on a large scale.



1966

Dedicated company founded in Hong Kong to oversee Asian market.

1972

Schenker becomes the official freight forwarder for Munich Olympics. Coinage of JETcargo, SEAcargo and Eurocargo as trade marks for bulk transportation by air, sea, rail and road.

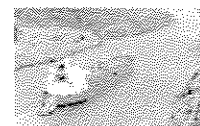
1989

Company decides to introduce SWORD (Schenker's Worldwide Online Realtime Data

Network) and EDIFACT standards

1991

Stinnes AG acquires a majority stake in Schenker from the German railroad company Deutsche Bundesbahn and divides the business into Schenker International (air and sea freight) and Schenker Eurocargo (European land transport).



1996

Stinnes air and sea freight, land transport, handling/logistics and seaport activities are grouped under the umbrella of Schenker-Rhenus AG.

1997

Schenker looks back on 125 years of history. Schenker AG repositions itself by divesting the bulk cargo business and forming three new business areas: Schenker Logistics, Schenker International and Schenker Eurocargo. The shareholding in the Swedish company BTL-AB, Gothenburg, gives birth to Europe's leading transportation and logistics provider.



1998

Co-ordination of land transport operations in Europe at Schenker and BTL under the Schenker-BTL name.

1999

Takeover of BTL AB

Schenker Australia appointed Official Freight Forwarder of the Sydney 2000 Olympic Games. Strategic alliance between Schenker and Seino.

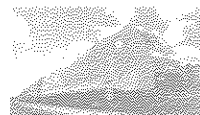


2000

Opening of the Integrated Logistics Center Rotterdam. Schenker, Inc. named for the Salt Lake City 2002 Olympic Winter Games. Schenker and Deutsche Bahn establish Raillog joint venture for railrelated logistics services.

2001

Merger of Schenker-BTL (Deutschland) AG and Schenker International Deutschland GmbH to form Schenker Deutschland AG.



2002

Schenker celebrates its 130th birthday. Schenker and Seino merge their international and logistics activities in Japan into Schenker-Seino Ltd. The Integrated Logistics Centre Nantø, Tokyo is opened. Deutsche Bahn takes over majority of Stinnes.

2003

Official Supplier to the IOC for freight forwarding and customs clearance services for the Olympic Games (Athens 2004, Turin 2006, Beijing 2008). Integration of Schenker and Joyau in France.

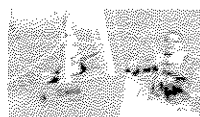


2004

Integration of Schenker and Spedpol positions Schenker as one of the leading providers of integrated logistics in Poland. 'A-Class' licence for new subsidiary in the growth market China.

2005

Schenker logistics center for consumer goods in Willebroek, Belgium, starts operations. Strengthening of the network in Russia and of the market position in Norway with Unijegods.

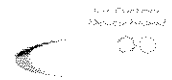


2006

New structure at DB Logistics. Acquisition of BAX Global.

More information on our latest events is given at News.





Shenker, Inc.